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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,788

01/16/2004

Thomas T. Yamashita

YAMA-009

8159

24353 7590 08/18/2008  
BOZICEVIC, FIELD & FRANCIS LLP  
1900 UNIVERSITY AVENUE  
SUITE 200  
EAST PALO ALTO, CA 94303

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

08/18/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/759,788	<b>Applicant(s)</b> YAMASHITA, THOMAS T.	
	<b>Examiner</b> NEIL LEVY	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10,11,13,14,16 -37, is/are pending in the application.
- 4a) Of the above claim(s) 21-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10,11,13,14,16 -20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1,3-8,10,11,13,14,16 -37, are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

*Claims 21--37 stand withdrawn from further consideration pursuant to 37 CFR*

*1.142(b) as being drawn to a nonelected invention & species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on 1/23/06*

Claim 3 is not amended, although status is stated to be .

The 112 rejections are withdrawn.

### ***Claim Rejections - 35 USC § 103***

Claims 1,3- 8,10,11,13,14, 16 - 20 rejected under 35 U.S.C. 103(a) as being unpatentable over SUMMERS in view of BEATTY 5634959 and PARKER us 20070134284a1

Summers, provides fertilizers & the instant elected pesticide, suitable for control of nematodes.

BEATTY provides plant treatment compositions of synthetic pesticides/complexing agent of EDTA, with urea, a water soluble macronutrient and N source, ascomyces nodusum, an assimilable energy component, ammonium phosphate, a water soluble micronutrient, and fish solubles and seaweed extract which would contain vitamin/co-factors (summary).

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PARKER teaches EDTA is an insecticidal pesticide (claim 42), thus, combinable with Summers' nematocide & fertilizer, inclusive of the advantageous fertilizer forms of Beatty, in order to save the time, energy & cost of applying 3 separate compositions.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest control means, to use Summers, modified as shown by Beatty to include fertilizers, as shown by Beatty of value to vegetables with additional pesticide shown as insecticidal by Parker.

The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects.

### ***Response to Arguments***

Applicant's arguments with respect to claims of record have been considered but are moot in view of the new ground(s) of rejection. We concur with the traversal of the 102 rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
Primary Examiner, Art Unit 1615